83-712

In The

Supreme Court of the United States

OCTOBER TERM, 1983

STATE OF NEW JERSEY,

Petitioner,

-vs-

T.L.O., a Juvenile,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

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QUESTION PRESENTED FOR REVIEW

Whether the Fourth Amendment's exclusionary rule applies to searches made by public school officials and teachers in school.

PARTIES TO THE PROCEEDING BELOW

In addition to the captioned parties, the parties in the New Jersey Supreme Court included Jeffrey Engerud, defendant now deceased, and, as *amicus curiae*, the New Jersey School Boards Association and the American Civil Liberties Union of New Jersey.

TABLE OF CONTENTS

TABLE OF CITATIONS

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OPINIONS BELOW

State in the Interest of T.L.O., 178 N.J. Super. 329, 428 A.2d 1327 (J.D.R.C. 1980), aff'd o.b. in part and rev'd o.g. in part, 185 N.J. Super. 279, 448 A.2d 493 (App. Div. 1982), rev'd 94 N.J. 331, 463 A.2d 934 (1983).

JURISDICTION

The judgment of the New Jersey Supreme Court which is the subject of this petition for *certiorari* was entered on August 8, 1983, and this petition has been filed within sixty (60) days of that date pursuant to *Rule 20(1)*, Rules of the Supreme Court. The jurisdiction of this Court is invoked pursuant to the provisions of *Title 28, United States Code, Section 1257(3).*

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, Amendment IV

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and No Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

N.J.S.A. 24:21-19. Prohibited Acts

> A. Manufacturing, distributing, dispensing - Penalties
>
> a. Except as authorized by this act, it shall be unlawful for any person knowingly or intentionally:
>
> (1) To manufacture, distribute, or dispense, or to possess or have under his control with intent to manufacture, distribute, or dispense a controlled dangerous substance; ....

N.J.S.A. 24:21-20. Prohibited Acts

> B. Possession, use or being under influence - Penalties
>
> a. It is unlawful for any person, knowingly or intentionally, to obtain, or to possess, actually or constructively, a controlled dangerous substance unless such substance was obtained directly, or pursuant to a valid prescription or order from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this act. Any person who violates this section with respect to: ...
>
> (4) Possession of more than 25 grams of marijuana, including any adulterants or dilutants, or more than 5 grams of hashish is guilty of a high misdemeanor and shall be punished by imprisonment for not more than 5 years, a fine of not more than $15,000.00 or both; provided, however, that any person who violates this section with respect to 25 grams or less of marijuana, including any adulterants or dilutants, or 5 grams or less of hashish is a disorderly person.

STATEMENT OF THE CASE

On the morning of March 7, 1980, a teacher of mathematics at Piscataway High School entered the girls' restroom and found the juvenile-respondent T.L.O. and a girl named Johnson holding what the teacher perceived to be lit cigarettes. (MT20-1 to 25).[1] Smoking was not permitted and the girls were thus committing an infraction of the school rules. The girls were taken to the principal's office where they met with Theodore Choplick, the assistant vice-principal. (MT21-1 to 3; MT21-24 to 22-11; MT31-18 to 20; MT33-20 to 34-10).

Mr. Choplick asked the two girls whether they indeed were smoking. Miss Johnson acknowledged that she had been smoking and Mr. Choplick imposed three days' attendance at a smoking clinic as punishment. (T49-24 to 50-7). T.L.O. not only denied smoking in the lavatory, but further asserted that she did not smoke at all. (MT27-10 to 17). Rather than merely hand out punishment in the face of T.L.O.'s denial, Mr. Choplick asked T.L.O. to come into a private office. (MT27-14 to 21; MT30-22 to 31-17).

Once inside this office, Mr. Choplick requested the juvenile's purse and she gave it to him. (MT27-24 to 28-7). A package of Marlboro cigarettes was visible inside the purse. (MT28-9 to 11). Mr. Choplick held up the Marlboros and said to the juvenile, "You lied to me." (MT28-14 to 18). In plain view next to the Marlboros was a package of "Easy Roll" rolling papers for cigarettes. (MT28-19 to 24; T16-12 to 14). The juvenile was confronted with the rolling papers and denied that they belonged to her. (MT29-5 to 24).

On the basis of his experience, Mr. Choplick understood possession of rolling papers to indicate that a person is smoking marijuana. (MT29-7 to 9; T15-18 to 16-1). Therefore, Mr. Choplick looked further into the purse and found other drug paraphernalia and documentation of T.L.O.'s sale of marijuana to other students. Mr. Choplick called T.L.O.'s mother and then notified the police. (MT41-5 to 13).

T.L.O.'s mother acceded to a police request to bring her daughter to police headquarters for questioning. (T18-12 to 18). Once at headquarters, T.L.O. was advised of her rights in her mother's presence and signed a *Miranda* rights card so indicating. (T20-3 to 21). The

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1 "MT" refers to the transcript of the motion to supress evidence heard on September 26, 1980;
"T" refers to the transcript of trial on March 23, 1981, the transcript of the juvenile's plea of guilty to other complaints on June 2, 1981, and the transcript of sentencing on January 8, 1982, all contained in one volume.

officer then began to question T.L.O. in her mother's presence. (T23-4 to 6). T.L.O. admitted that the objects found in her purse belonged to her. She further admitted that she was selling marijuana in school, receiving $1 per "joint", or rolled marijuana cigarette. T.L.O. stated that she sold between 18 to 20 joints at school that very morning, before the drug was confiscated by the assistant vice-principal. (T22-2 to 15). A delinquency complaint charging the juvenile with possession of marijuana with the intent to distribute, contrary to *N.J.S.A. 24:21-19(a)(1)* and *N.J.S.A. 24:21-20(a)(4)*, was then drafted and filed the same day. Because the offense occurred on school property, the school, in accordance with its published procedures, administratively suspended the juvenile for ten days.

On September 26, 1980, the State trial court considered and denied the juvenile's motion to suppress evidence. See *State in the Interest of T.L.O., 178 N.J. Super. 329, 428 A.2d 1327, 1343-1345 (J.D.R.C. 1980), aff'd o.b. in part and rev'd o.g. in part 185 N.J. Super. 279, 448 A.2d 493 (App. Div. 1982)*. On March 23, 1981, the juvenile was tried and, at the conclusion of trial, she was found guilty and adjudicated delinquent. (T69-6 to 8). On January 8, 1982, T.L.O. was sentenced to probation for one year with the special condition that she observe a reasonable curfew, attend school regularly and successfully complete a counselling and drug therapy program.

On February 11, 1982, the juvenile filed a Notice of Appeal to the Superior Court of New Jersey, Appellate Division. On June 30, 1982, the Appellate Division, with one judge dissenting, affirmed the denial of the motion to suppress evidence seized in the search of the juvenile's purse, for the reasons expressed in the trial court's reported opinion. *State in the Interest of T.L.O., 185 N.J. Super. 279, 448 A.2d 493 (App. Div. 1982).*

On July 16, 1982, the juvenile filed a Notice of Appeal as of right to the Supreme Court of New Jersey. On August 18, 1983, the State Supreme Court held that the Fourth Amendment exclusionary rule applies to searches and seizures of students in public schools. *State in the Interest of T.L.O., 94 N.J. 331, 463 A.2d 934 (1983).*

In that same opinion, the New Jersey Supreme Court decided the companion case of *State v. Engerud*, involving a search of a high school student's locker pursuant to information that the student was selling controlled dangerous substances in the school. Shortly after the date of the decision, the defendant Engerud was killed in a motorcycle accident, thus mooting any petition in that case.

SUMMARY OF ARGUMENT

The exclusionary rule should not be applied to a search of a student by a public school official. Because a school official is not primarily interested in whether a conviction is later obtained and conducts searches too infrequently to adapt his methods to the proper rules, application of the exclusionary rule would be an ineffective deterrent of those officials conducting unreasonable school searches. Any incremental deterrent effect of suppression in a later criminal proceeding would be far outweighed by the costs to society of suppression of probative evidence of criminality.

REASONS FOR GRANTING THE WRIT

POINT I

THE EXCLUSIONARY RULE IS INAPPLICABLE TO SEARCHES CONDUCTED BY PUBLIC SCHOOL OFFICIALS IN SCHOOLS.

In the present case,[2] the New Jersey Supreme Court ruled that a search of a public high school student's person or belongings by a school teacher or administrator constitutes an "official search" for Fourth Amendment purposes. Thus, the court ruled that the holdings of this Court require that any evidence seized pursuant to an unreasonable school search be excluded from evidence in any criminal or juvenile delinquency proceeding.[3]

This Court has never ruled that the Federal Constitution requires the exclusion of evidence seized pursuant to a school search performed solely by school officials devoid of any police involvement. Indeed, this Court has noted that its Fourth Amendment exclusionary rule mandates have related exclusively to searches conducted by police officials. Moreover, this Court has ruled that the exclusionary rule clearly does not apply to searches conducted by private persons not connected with law enforcement. *Burdeau v. McDowell, 256 U.S. 465 (1921).* The State of New Jersey asserts that although school officials are employed by the public and may be considered as public officials for some purposes, they have no more connection with law enforcement than any other citizen. Therefore, we submit that this Court never intended the exclusionary rule to apply to criminal proceedings emanating from searches and seizures by school teachers and officials. The contrary holding of the New Jersey Supreme Court is clearly unsupported and erroneous.

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2 *State in the Interest of T.L.O., 94 N.J. 331, 463 A.2d 934 (1983).*

3 In this regard, it is noted that in this portion of its opinion the New Jersey Supreme Court ruled entirely on the basis of this Court's decisions and mandates. Thus, it is clear that this Court's jurisdiction is properly invoked. *Michigan v. Long, ____ U.S. ____, 103 S.Ct. 3969, 3974-3975 (1983).* The state court did refer to the fact that a state statute buttressed its conclusion that it was required to exclude evidence in a situation such as this. *94 N.J. at 342 n.5.* The authority cited, however, refers only to the fact that the exclusionary rule applies equally to juvenile delinquency and adult criminal proceedings. The State of New Jersey did not contest this issue in the state courts and does not raise this issue in this Court. While agreeing that under New Jersey law the same types of illegally seized evidence would be excluded in both juvenile delinquency and adult criminal proceedings, we challenge the state court's finding that, on the basis of federal authority, evidence seized in a public school search is subject to the exclusionary rule as enunciated in *Mapp v. Ohio, 367 U.S. 643 (1961).*

The primary, if not the sole, justification for the exclusionary rule is the deterrence of illegal police conduct that violates Fourth Amendment rights.[4] *Stone v. Powell, 428 U.S. 465 (1976); United States v. Janis, 428 U.S. 433, 446 (1976); United States v. Calandra, 414 U.S. 338, 347-348 (1974).* In recent years, this Court has refused to apply the rule to situations where it would achieve little or no deterrence, and has articulated a balancing test for the rule's application.

The exclusionary rule is justified in the illegal search context only because of its expected deterrence of future police misconduct. In determining whether to apply the rule, the benefits of deterrence are to be weighed against the substantial detriment to society and the truth-finding process inherent in excluding relevant evidence of criminality. *United States v. Calandra, 414 U.S. at 347;* see *United States v. Ceccolini, 435 U.S. 268 (1978).* Evidence should be excluded only where the benefit accruing to society from the additional deterrent to unlawful police practices equals or exceeds the detriment to society caused by the release of criminals. This Court has refused to rule "that anything which deters illegal searches is thereby commanded by the Fourth Amendment." *Alderman v. United States, 394 U.S. 165, 174-175 (1969).* The exclusionary rule is simply not coextensive with the Fourth Amendment. See *United States v. Havens, 446 U.S. 620 (1980)* (defendant may be impeached by evidence illegally obtained); *Michigan v. DeFillippo, 443 U.S. 31 (1979)* (that the statute pursuant to which defendant was arrested was later declared unconstitutional did not require suppression of evidence seized incident to that arrest); *United States v. Caceres, 440 U.S. 741 (1979)* (violation of IRS regulations regarding electronic surveillance does not require suppression of tape recordings in the prosecution of a taxpayer for bribery of an IRS agent); *United States v. Janis, 428 U.S. 433 (1976)* (additional marginal deterrence provided by forbidding use in federal civil proceeding of evidence illegally seized by state officials does not outweigh cost to society of applying rule in that situation); *United States v. Peltier, 422 U.S. 531 (1975)* (no suppression remedy for good faith border search occurring prior to Supreme Court decision holding that such searches must be based on probable cause); *United States v. Calandra, 414 U.S. 338 (1974)*

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4 *The second asserted justification, that of the "imperative of judicial integrity," although mentioned (see United States v. Peltier, 422 U.S. 531, 536-538 (1975);* and *Elkins v. United States, 364 U.S. 206, 222 (1969)),* has been substantially, if not completely, discounted in importance as a basis for suppressing probative evidence. See *Stone v. Powell, 428 U.S. at 485.*

(exclusionary rule is inapplicable to grand jury proceedings because the speculative and undoubtedly minimal advance in the deterrence of police misconduct would be achieved at the expense of substantially impeding the role of the grand jury); *Alderman v. United States, 394 U.S. 165 (1969)* (additional benefits of extending the exclusionary rule to persons aggrieved by introductions of evidence unlawfully obtained in violation of another's privacy rights does not justify "further encroachment upon the public interest"); *Walder v. United States, 347 U.S. 62 (1954)* (the exclusionary rule is inapplicable to evidence used to impeach the defendant).

In balancing the expected deterrence benefits of applying the exclusionary rule against the expected detriments, in the context of a search by a public school official, it is clear that the balance weighs heavily against excluding evidence. Indeed, it has been argued that exclusion can be an effective deterrent only if two conditions are met: (1) the searcher must have a strong interest in obtaining convictions, and (2) the searcher must conduct searches and seizures regularly in order to be familiar enough with the rules to adapt his methods to conform to them. Note, *19 Stan. L. Rev. 608, 614-615 (1967)*. Neither condition can be met in the case of a public school official. The assistant vice-principal in this case had no interest in obtaining a criminal conviction. Indeed, the object of his search was evidence of a school disciplinary infraction wholly unrelated to any criminal prosecution. The possibility of suppression in a subsequent criminal judicial proceeding, had it occurred to the assistant vice-principal, would not have deterred him from enforcing the school's rules, his primary concern.

In this regard, the incentive of school officials to search could not be lessened by the suppression of evidence at a subsequent delinquency proceeding. Substantial incentives for school officials to search are provided by the need to enforce school regulations, to safeguard students during school hours by confiscating weapons and other contraband and to maintain a drug-free learning environment. Under the circumstances of this case, the vice-principal would undoubtedly have followed the same course of conduct in his attempt to enforce the school's non-smoking regulations regardless of his consideration, or knowledge, that any "evidence" seized would not be used later in a court of law.

Further, school authorities conduct searches infrequently and even less frequently come in contact with the criminal justice system. They have little interest in obtaining convictions, and are unlikely to even learn whether a court deems a particular search valid. Thus, there

is no reasonable possibility that a school official will become familiar with the law governing searches and seizures and be able to conform his conduct accordingly. The facts of this case demonstrate this principle quite plainly. A layman considering the juvenile's ready compliance with the request to hand over her purse might well conclude that she consented to the search. Clearly though, under *State v. Johnson, 68 N.J. 349, 346 A.2d 66 (1975)*, which requires that a person be specifically informed of his right to refuse permission to search, the consent was not valid. It is unreasonable to request principals, teachers and others not involved in law enforcement to understand, and be able to apply to myriad factual situations, complex principles of law which give lawyers and judges pause.

Thus, it can be seen that application of the exclusionary rule to this type of case would be costly and ineffective. The suppression of evidence impedes the search for truth and frustrates achievement of that goal. The cost, both to society and to the juvenile, is high. Balanced against these costs, there is little or no benefit. The primary value of the exclusionary rule, deterrence, is not present, for school officials acting in the course of their employment have little or no interest in criminal proceedings and are not likely to know whether or why evidence they have discovered has been suppressed. Thus, application of the exclusionary rule to searches by school authorities without law enforcement involvement is senseless. Indeed, it is clear beyond doubt that when this Court developed the exclusionary rule, it did not intend to regulate the conduct of school officials who deal primarily with minor school disciplinary problems and infractions of school rules. Rather, it intended the rule to deter misconduct on the part of those persons who are charged with the regular enforcement of the criminal laws.

Despite the fact that this Court has never, even inferentially, applied the exclusionary rule to searches by school officials, the issue presented in this case has divided the state courts. A decision by this Court is needed in order to end the confusion in this area.

While adopting varying rationales, many state courts have ruled that the purpose of the Fourth Amendment exclusionary rule -- "discouraging lawless police conduct"[5] -- would not be furthered by application of the rule to school searches. Therefore, these states have permitted evidence seized by school officials to be admitted into evidence at criminal proceedings without regard to the constitutionality of the search. See *D.R.C. v. State, 646 P.2d 252, 258 (Alas. Ct. App. 1982); In re G., 11 Cal. App.3d 1193, 90 Cal. Rptr. 361*

5 *Terry v. Ohio, 392 U.S. 1, 12 (1968).*

(Ct. App. 1970); In re Donaldson, 269 Cal. App.2d 509, 75 Cal. Rptr. 220 (Ct. App. 1969); State v. Young, 234 Ga. 488, 216 S.E. 2d 586 (1975); People v. Stewart, 63 Misc.2d 601, 313 N.Y.S.2d 253 (Crim. Ct. N.Y. 1970); State v. Wingerd, 40 Ohio App.2d 235, 318 N.E.2d 866 (Ct. App. 1974); Commonwealth v. Dingfelt, 227 Pa. Super. 380, 323 A.2d 145 (Super. Ct. 1974); Mercer v. State, 450 S.W.2d 715 (Tex. Ct. App. 1970). See also *Keene v. Rogers, 316 F.Supp. 217 (N.D. Me. 1970); United States v. Coles, 302 F.Supp. 99 (N.D. Me. 1969).*

It must be noted, however, that other jurisdictions have ruled that even when acting alone, without any law enforcement involvement, public school officials are government agents for purposes of the exclusionary rule. In these jurisdictions, as in New Jersey following the State Supreme Court ruling in the present case, evidence obtained in a search conducted by school officials which does not strictly comply with the strictures of the Fourth Amendment will be suppressed at a criminal trial. See *State v. Baccino, 282 A.2d 869 (Del. 1971); State v. Mora, 307 So.2d 317 (La. 1975), vacated and remanded sub nom. Louisiana v. Mora, 423 U.S. 809 (1976), aff'd on remand 330 So.2d 900 (La. 1976), cert. den. 429 U.S. 1004 (1976); Doe v. State, 540 P.2d 827 (N.M. 1975); State v. Walker, 528 P.2d 113 (Or. Ct. App. 1974). Cf. Jones v. Latexo Indep. School Dist., 449 F.Supp. 223 (E.D. Tex. 1980).*

The important and recurring nature of the issue presented in this case is demonstrated by the chronology of *Louisiana v. Mora, supra.* In that case, the Supreme Court of Louisiana suppressed evidence obtained in a school search. This Court granted the State's petition for *certiorari* but remanded the case for consideration of whether the state judgment was based on state or federal grounds. The Supreme Court of Louisiana ruled, in a split decision, that it had ruled on the basis of both state and federal grounds, thus depriving this Court of jurisdiction. The State's reapplication for *certiorari* was denied. Although this Court was deprived of jurisdiction in *Louisiana v. Mora,* the issue presented in that case continues to reach disparate results. Compare *Jones v. Latexo Indep. School Dist., supra,* and *State in the Interest of T.L.O., supra,* with *Bellnier v. Lund, 438 F.Supp. 47 (N.D.N.Y. 1977),* and *D.R.C. v. State, supra.* Thus, this case presents an issue which has not been but should be decided by this Court. In addition, the decision of the New Jersey Supreme Court is in conflict with decisions of the courts of other states. Therefore, this Court should grant *certiorari* pursuant to *Supreme Court Rule 17(a) and (b).*

CONCLUSION

For the reasons set forth herein, it is respectfully urged that the petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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Dated: October 7, 1983

APPENDIX

APPENDIX A

OPINION OF THE SUPREME COURT OF NEW JERSEY DECIDED AUGUST 8, 1983

STATE IN THE INTEREST OF T.L.O., JUVENILE-APPELLANT.

STATE OF NEW JERSEY, PLAINTIFF-RESPONDENT, v. JEFFREY ENGERUD, DEFENDANT-APPELLANT.

Argued May 10, 1983--Decided August 8, 1983.

Lois DeJulio, First Assistant Deputy Public Defender, argued the cause for appellant T.L.O. (*Joseph H. Rodriguez*, Public Defender, attorney).

Randolph A. Newman, Designated Counsel, argued the cause for appellant Jeffrey Engerud (*Joseph H. Rodriguez*, Public Defender, attorney).

Victoria Curtis Bramson, Deputy Attorney General, argued the cause for respondent State of New Jersey *(State in the Interest of T.L.O.) (Irwin I. Kimmelman*, Attorney General of New Jersey, attorney; *Victoria Curtis Bramson* and *Mark Paul Cronin*, Deputy Attorney General, of counsel and on the brief).

Rocky L. Peterson, Deputy Attorney General, argued the cause for respondent *(State v. Engerud) (Irwin I. Kimmelman*, Attorney General of New Jersey, attorney).

Paula A. Mullaly, General Counsel, submitted a brief on behalf of *amicus curiae* New Jersey School Boards Association *(State in the Interest of T.L.O.) (Paula A. Mullaly*, attorney; *Anthony P. Sciarrillo*, on the brief).

Barry S. Goodman submitted a brief on behalf of *amicus curiae* American Civil Liberties Union of New Jersey *(State in the Interest of T.L.O.) (Crummy, Del Deo, Dolan & Purcell* attorneys).

The opinion of the Court was delivered by

O'HERN, J.

The issues here are (1) whether the Fourth Amendment exclusionary rule applies to student searches made by public school

administrators; and (2) what standard determines the reasonableness of the search if the exclusionary rule does apply.

T.L.O.

On March 7, 1980, a teacher at Piscataway High School reported that fourteen year old T.L.O. and another student were smoking in the girls' restroom. School regulations forbade smoking in that area and the teacher took the students to the assistant principal's office. He asked the students whether they had been smoking. T.L.O.'s companion admitted smoking and the assistant principal assigned her to a three-day smoking clinic.

T.L.O. denied smoking in the lavatory or indeed smoking at all. The assistant principal asked T.L.O. to go with him into a private office. He closed the door and asked her to turn over her purse. At this time they were both seated at a desk, he behind and she in front. When he opened the purse on the desk, he saw a pack of Marlboros. He picked up the cigarettes and said "You lied to me." As he reached into the purse for the cigarettes, he saw rolling papers in plain view. That fact, his experience told him, meant that marijuana was probably involved. He therefore looked further into the purse and found a metal pipe of the kind used for smoking marijuana, empty plastic bags and one plastic bag containing a tobacco-like substance. His search also revealed an index card reading "People who owe me money," followed by a list of names and amounts of $1.50 and $1.00, and two letters, one from T.L.O. to another student and a return letter, both containing language clearly indicating drug dealing by T.L.O. The purse also contained $40, most of it in one-dollar bills.

The assistant principal called T.L.O.'s mother and the police. A police officer asked the mother to bring T.L.O. to police headquarters for questioning. There, T.L.O. admitted selling marijuana to other students. She was charged with delinquency based on possession of marijuana with the intent to distribute. *N.J.S.A. 2A:4-44; 24:21-20(a)(4); 24:21-19(a)(1).*[1]

T.L.O. moved to suppress the evidence seized from her purse and her confession, claiming that the search tainted the confession. She also argued that she had not knowingly waived her right to remain

[1]Since this drug offense occurred on school property, the school, in accordance with published procedures, administratively suspended the juvenile for ten days.

silent. The Juvenile and Domestic Relations Court denied the motion to suppress. *178 N.J.Super. 329 (1980).*[2] It found the Fourth Amendment exclusionary rule applicable to school searches, but found the standard applicable to such a search to be "a reasonable suspicion that a crime has been or is in the process of being committed, *or* reasonable cause to believe that the search is necessary to maintain school discipline or enforce school policies." *178 N.J.Super. at 341* (emphasis in original). It concluded that the assistant principal had justification for opening the purse, since he had reasonable cause to believe that smoking, a violation of school policy, had occurred. Once he had opened the purse, in the court's opinion, the contents were subject to the "plain view" doctrine. Having found the marijuana and paraphernalia, the assistant principal justifiably continued his search to determine the extent of that violation. *178 N.J.Super. at 343.*

On appeal, the Appellate Division affirmed the denial of the suppression motion on the basis of the Juvenile Court's opinion. *185 N.J.Super. 279 (1982).* But it vacated the adjudication of delinquency and remanded for further proceedings to determine whether the juvenile had knowingly waived her constitutional rights before giving the confession. Judge Joelson dissented from that portion of the opinion that approved a standard lower than probable cause for school searches. He characterized this as "riding rough-shod over the rights of a juvenile in school." *185 N.J.Super. at 284 (Joelson J., dissenting).* T.L.O. appealed to us of right on the basis on the dissent below. *R.2:2-1(a)(2).*

ENGERUD

On January 29, 1980, a vice-principal at Somerville High School met with a Somerville police detective in the high school office. The detective had just received a telephone call from a person claiming to be the father of a student. The caller said that the defendant, an eighteen year old student at the school, was selling drugs in the school and if the police did not stop it, he would take matters into his own

[2]During the pendency of the delinquency proceeding, the juvenile, by her parents, challenged her suspension in Superior Court, Chancery Division. That court ordered the suspension quashed because the search that revealed the marijuana violated the Fourth and Fourteenth Amendments.

The Juvenile Court considered and denied the juvenile's motion to dismiss the delinquency complaint. It refused to give *res judicata* or collateral estoppel effect to the Chancery Division's suppression of evidence in appellant's challenge to her suspension. *178 N.J.Super. 329 at 343-45.* That issue is not before us.

hands. Their conversation lasted five minutes and the detective left the building.

The vice-principal then relayed this information to the assistant principal and the principal. The principal had heard a "rumor" a year earlier that the defendant was selling drugs at the school. He and the assistant principal opened the defendant's locker through the use of a pass-key that could open any locker in the building even though the lockers are equipped with combination locks. The two men made a complete search of the locker and its contents. In the defendant's coat pocket they found two plastic bags containing packets of a white substance that turned out to be methamphetamine (speed). Each packet was marked with its weight in fractions of a gram. They also discovered a package of marijuana rolling paper.

The vice-principal called the police and defendant's parents and took the defendant out of class. The principal asked the defendant to empty his pockets. This disclosed a small quantity of marijuana and $45 in cash.

Engerud was charged with unlawful possession of a controlled dangerous substance and unlawful possession of a controlled dangerous substance with intent to distribute. *N.J.S.A. 24:21-20(a)(1); 24:21-19(a)(1).* On June 18, 1981, the Law Division Judge denied a motion to suppress the evidence obtained from the locker and pocket searches. In his view the search was "responsible and diligent under all of the circumstances."

On July 9, 1981, defendant pleaded guilty to the second count of the indictment and was sentenced to an indeterminate term at Yardville, not to exceed five years. His sentence was stayed pending appeal. We certify Engerud's appeal directly. *R. 2:12-1. 93 N.J. 308 (1983).*

I.

"It can hardly be argued that ... students ... shed their constitutional rights ... at the schoolhouse gate." *Tinker v. Des Moines Ind. Community School Dist., 393 U.S. 503, 506, 89 S.Ct. 733, 736, 21 L.Ed.2d 731, 737 (1969).* In *Tinker*, the Supreme Court recognized that wearing an armband in school for the purpose of expressing certain views is a type of symbolic act that is protected by the free speech clause of the First Amendment. *Id. at 505, 89 S.Ct. at 735, 21 L.Ed.2d at 737.* It found that wearing the armband in the

circumstances of the case involved no actually or potentially disruptive conduct, *id.*, and that students' constitutional rights are protected unless their conduct "materially disrupts classwork or involves substantial disorder or invasion of the rights of others." *id. at 513, 89 S.Ct. at 740, 21 L.Ed.2d at 741. Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975),* establishes that whenever students face loss of an important substantive right, they share with every person protected by the Constitution the right to procedural due process.

This long-standing[3] recognition of students' legitimate entitlement to the minimum protections of the Constitution parallels the developing concern of the Court that the juvenile justice system reflect the fundamental fairness that our Constitution guarantees adult offenders. *See In re Gault, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967).* Young people and students are persons protected by the United States and New Jersey Constitutions. *E.g., Island Trees Union Free School Dist. No. 26 Bd. of Educ. v. Pico, _____ U.S. _____, _____, 102 S.Ct. 2799, 2807, 73 L.Ed.2d 435, 445-46 (1982); Tinker, 393 U.S. at 511, 89 S.Ct. at 739, 21 L.Ed.2d at 740; Gault, 387 U.S. at 13, 87 S.Ct. at 1436, 18 L.Ed.2d at 538. But compare Ingraham v. Wright, 430 U.S. 651, 97 S.Ct. 1401, 51 L.Ed.2d 711 (1977)* (Eighth Amendment does not bar moderate corporal punishment of students) *with N.J.S.A. 18A:6-1* (banning corporal punishment in New Jersey schools).

Some contend, however, that the exclusionary rule should not apply since the fundamental purpose of *Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961),* is to deter law enforcement officials from violating constitutional rights. They suggest that the school official be viewed as a private person, indeed as one *in loco parentis*,[4] whose relationship to the student does not invoke the same protections as a search by a law enforcement official. But "[t]he Four-

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[3]In *Tinker*, Justice Fortas showed that the Court had for half a century unmistakably recognized the application of constitutional rights to students. *393 U.S. at 506, 89 S.Ct. at 736, 21 L.Ed.2d at 737* (citing, *inter alia, West Virginia Bd. of Educ. v. Barnette, 319 U.S. 624, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943); Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925); Bartels v. Iowa, 262 U.S. 404, 43 S.Ct. 628, 67 L.Ed. 1047 (1923); Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923)).*

[4]Judges and commentators have not failed to detect the irony of this analogy. They suggest that parents infrequently search their children and turn the evidence over to police for prosecution. *E.g., State in Interest of T.L.O., 185 N.J.Super.*

teenth Amendment [here incorporating the Fourth Amendment], as now applied to the States, protects the citizen against the State itself and all of its creatures--Boards of Education not excepted." *West Virginia Bd. of Educ. v. Barnette, 319 U.S. 624, 637, 63 S.Ct. 1178, 1185, 87 L.Ed. 1628, 1637(1943)* (school may not compel flag salute over religious objection); *State in Interest of G.C., 121 N.J.Super. 108, 114 (J.D.R.C.1972)*. The "basic purpose of [the Fourth Amendment] is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." *In re Martin, 90 N.J. 295, 312 (1982)* (Pashman, J.)(quoting *Marshall v. Barlow's, Inc., 436 U.S. 307, 312, 98 S.Ct. 1816, 1820, 56 L.Ed.2d 305, 311 (1978); Camara v. Municipal Court, 387 U.S. 523, 528, 87 S.Ct. 1727, 1730, 18 L.Ed.2d 930, 935 (1967))*.

It is of little comfort to one charged in a law enforcement proceeding whether the public official who illegally obtained the evidence was a municipal inspector, *See v. Seattle, 387 U.S. 541, 87 S.Ct. 1737, 18 L.Ed.2d 943 (1967); Camara, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930;* a firefighter, *Michigan v. Tyler, 436 U.S. 499, 506, 98 S.Ct. 1942, 1948, 56 L.Ed.2d 486, 496 (1978);* or school administrator or law enforcement official. We believe that the issue is settled by the decisions of the Supreme Court and we accept the proposition that if an official search violates consitutional rights, the evidence is not admissible in criminal proceedings.[5]

279, 282 (App. Div. 1982) (Joelson, J., dissenting); Mercer v. State, 450 S.W.2d 715, 721 (Tex.Civ.App.1970)(Hughes, J., dissenting); State v. McKinnon, 88 Wash.2d 75, 91, 558 P.2d 781, 790 (Wash.Sup.Ct.1977) (Rosellini, J., dissenting); Buss, "The Fourth Amendment and Searches of Students in Public Schools," 59 Iowa L.Rev. 739, 768 (1974); Trosch, Williams & DeVore, "Public School Searches and the Fourth Amendment," 5 J.L. & Educ. 41, 53 (1982); Comment, 5 Fla.St.U.L.Rev. 526, 531 (1977). Today, cases reject broad application of the concept. *E.g., Horton v. Goose Creek Ind. School Dist., 690 F.2d 470, 480 n. 18 (5th Cir.1982), cert. den., _____ U.S. _____, 103 S.Ct. 3536, 76 L.Ed.2d _____(1983); D.R.C. v. State, 646 P.2d 252, 255 (Alaska Ct.App.1982).*

[5]Our Code of Juvenile Justice buttresses this conclusion. It specifically provides:

> The right to be secure from unreasonable searches and seizures ... shall be applicable in cases arising under this act as in cases of persons charged with crime. *[N.J.S.A.2A:4-60].*

Juvenile proceedings are not criminal proceedings but for ease of discussion we shall refer to suppression of evidence in criminal proceedings when a juvenile is charged with an offense under *N.J.S.A. 2A:4-44* that would be a criminal offense if committed by an adult.

II.

A more difficult question is whether a school official may effect a search without a warrant. We start with this proposition:

> The Fourth Amendment proscribes all unreasonable searches and seizures, and it is a cardinal principle that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment--subject only to a few specifically established and well-delineated exceptions." *[Mincey v. Arizona, 437 U.S. 385, 390, 98 S.Ct. 2408, 2412, 57 L.Ed.2d 290, 298-99 (1978)*(quoting *Katz v. United States, 389 U.S. 347, 357, 88 S.Ct. 507, 514, 19 L.Ed.2d 576, 585 (1967))*].

See also State v. Bruzzese, _____ N.J. _____, _____ (1983) (slip op. at 8-9); State v. Patino, 83 N.J. 1, 7 (1980).

Our Court has generally held that, except in certain carefully defined classes of cases, officials may not conduct administrative searches of private property without a warrant. *Martin, 90 N.J. 295.* One of the best recognized exceptions is for "pervasively regulated" businesses. *United States v. Biswell, 406 U.S. 311, 315-16, 92 S.Ct. 1593, 1596, 32 L.Ed.2d 87, 92 (1972); Martin, 90 N.J. at 312; State v. Dolce, 178 N.J.Super. 275, 283 (App.Div. 1981).* Although the school setting does not at first glance fit that general mode, "[w]ithin that matrix, we examine the statute[s] and conduct of the [school officials] in this case." *See State v. Williams, 84 N.J. 217, 225 (1980).*

The Legislature has specifically charged school officials to maintain order, safety and discipline. The statutes give them authority to prevent disorderly conduct by pupils, *N.J.S.A. 18A:25-2,* and students are required to submit to such authority, *N.J.S.A. 18A:37-1.* Specifically, school officials have power to suspend pupils for illegal possession or consumption of drugs or alcohol, *N.J.S.A. 18A:37-2(j),* for assaulting teachers, *N.J.S.A. 18A:37-2.1,* or for other good cause. *See N.J.S.A. 18A:37-2,-4.* Other statutes allow them to deal specifically with pupils who are under the influence of drugs or alcohol, *N.J.S.A. 18A:40-4.1* (principal shall notify parent); *N.J.S.A. 18A:35-4a* (board of education shall establish policies and procedures for evaluating and treating alcohol users). Finally, *N.J.S.A. 18A:6-1*

grants specific power to seize weapons or other dangerous items and to quell disturbances.

Taken together, these statutes yield the proposition that school officials, within the school setting, have the authority to conduct reasonable searches necessary to maintain safety, order and discipline within the schools. This holding comports with prevailing decisional law. Judge Frank Johnson has stated it thus in the context of a college dormitory search:

> A student naturally has the right to be free of unreasonable search and seizures, and a tax-supported [school] may not compel a "waiver" of that right as a condition precedent to admission. The [school], on the other hand, has an "affirmative obligation" to promulgate and to enforce reasonable regulations designed to protect campus order and discipline and to promote an environment consistent with the educational process. The validity of the regulation authorizing search of dormitories thus does not depend on whether a student "waives" his right to Fourth Amendment protection or on whether he has "contracted" it away; rather, its validity is determined by whether the regulation is a reasonable exercise of the [school's] supervisory duty. In other words, if the regulation --or, in the absence of a regulation, the action of the [school] authorities--is necessary in aid of the basic responsibility of the institution regarding discipline and the maintenance of an "educational atmosphere," then it will be presumed facially reasonable despite the fact that it may infringe to some extent on the outer bounds of the Fourth Amendment rights of students. *[Moore v. Student Affairs Comm. of Troy State University, 284 F.Supp. 725, 729 (M.D.Ala.1968)*(footnotes omitted)].

We agree with that analysis and we too "reject as unsound the notion that ... [students] waive their Fourth Amendment rights." *See Williams, 84 N.J. at 225* (pervasively regulated licensee does not "waive" constitutional rights). As in so many areas of the law, we must consider competing claims. Here we must weigh the individual student's rights against the school's obligation to maintain order. *Cf. State v. Williams, 93 N.J. 39 (1983)* (free press

and fair trial rights); *In re Hinds, 90 N.J. 604 (1982)*(free speech and orderly trial). We are satisfied that the legislative scheme for public education in New Jersey contemplates a narrow band of administrative searches to achieve educational purposes.

III.

Finally, we must articulate the standard that should guide the school official in the conduct of the search. We reiterate the proposition that "[t]he basic purpose of [the Fourth] Amendment, as recognized in countless decisions of [the Supreme] Court, is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." *Camara, 387 U.S. at 528, 87 S.Ct. at 1730, 18 L.Ed.2d at 935.* Whenever warrantless searches are authorized by law, they "are themselves subject to the independent constitutional requirement of reasonableness." *In re Martin, 90 N.J. at 314 n.9 (citing Barlow's, 436 U.S. at 312, 98 S.Ct. at 1820, 56 L.Ed.2d at 311).*[6]

Courts have adhered to the probable cause standard when police have participated in the search. *Picha v. Wielgos, 410 F.Supp. 1214 (N.D.Ill.1976); Piazzola v. Watkins, 316 F.Supp. 624 (M.D.Ala.1970), aff'd, 442 F.2d 284 (5th Cir.1971); M.J. v. State, 399 So.2d 996 (Fla.Dist.Ct.App.1981); People v. Bowers, 72 Misc.2d 800, 339 N.Y.S.2d 783 (N.Y.Crim.Ct.1973); Annot., 49 A.L.R.3d 978, 987-89 (1973); see also Waters v. United States, 311 A.2d 835, 837-38 (D.C.Ct.App.1973).* If it should occur that a police-initiated search employs school officials for law enforcement purposes, courts will have little difficulty in finding a subterfuge. *Piazzola, 316 F.Supp. at 628.*

But when police have not participated in the search, courts have generally phrased the standard in terms less stringent than probable cause. The Supreme Court of Washington has outlined the reasons for this view:

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[6]For example:

> It does not require a constitutional scholar to conclude that a nude search of a thirteen-year-old child is an invasion of constitutional rights of some magnitude. More than that: it is a violation of any known principle of human decency. Apart from any constitutional readings and rulings, simple common sense would indicate that the conduct of the school officials in permitting such a nude search was not only unlawful but outrageous under "settled indisputable principles of law." *[Doe v. Renfrow, 631 F.2d 91, 92-93 (7th Cir.1980), cert. den., 451 U.S. 1022, 101 S.Ct. 3015, 69 L.Ed.2d 395 (1981)].*

The high school principal is not a law enforcement officer. His job does not concern the discovery and prevention of crime. His duty as the chief administrator of the high school includes a primary duty of maintaining order and discipline in the school. In carrying out this duty, he should not be held to the same probable cause standard as law enforcement officers. Although a student's right to be free from intrusion is not to be lightly disregarded, for us to hold school officials to the standard of probable cause required of law enforcement officials would create an unreasonable burden upon these school officials. Maintaining discipline in schools oftentimes requires immediate action and cannot await the procurement of a search warrant based on probable cause. We hold that the search of a student's person is reasonable and does not violate his Fourth Amendment rights, if the school official has reasonable gounds to believe the search is necessary in the aid of maintaining school discipline and order. *[State v. McKinnon, 88 Wash.2d 75, 81, 558 P.2d 781, 784 (1977).][7]*

We are satisfied that when a school official has reasonable grounds to believe that a student possesses evidence of illegal activity or activity that would interfere with school discipline and order, the school official has the right to conduct a reasonable search for such evidence.

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[7]This standard is closely akin to that articulated in the much-cited case of *People v. Jackson, 65 Misc.2d 909, 319 N.Y.S.2d 731 (N.Y.App. Term 1971), aff'd, 30 N.Y.2d 734, 333 N.Y.S.2d 167, 284 N.E.2d 153 (N.Y.Ct.App.1972).* That case sustained a student search in which the school official had "reasonable grounds for suspecting that something unlawful was being committed, or about to be committed." *65 Misc.2d at 914, 319 N.Y.S.2d at 736.*

The majority of cases have adopted either the *Jackson* or *McKinnon* standard. *E.g., State v. Baccino, 282 A.2d 869 (Del.Super.Ct.1971); State v. D.T.W., 425 So.2d 1383 (Fla.Dist.Ct.App.1983); People v. Ward, 62 Mich. App. 46, 233 N.W.2d 180 (Mich.Ct.App.1975); State in Interest of G.C., 121 N.J.Super. 108 (J.D.R.C.1972)*("reasonable suspicion"); *Tarter v. Raybuck, 556 F.Supp. 625 (N.D.Ohio 1983)*(dictum); *Stern v. New Haven Community Schools, 529 F.Supp. 31 (E.D.Mich. 1981); Bilbrey v. Brown, 481 F.Supp. 26 (D.Or.1979); M. v. Ball-Chatham Community Unit School Dist. No. 5 Bd. of Educ., 429 F.Supp. 288 (S.D.Ill.1977)* ("reasonable cause to believe").

In determining whether the school official has reasonable grounds, courts should consider "the child's age, history, and school record, the prevalence and seriousness of the problem in the school to which the search was directed, the exigency to make the search without delay, and the probative value and reliability of the information used as a justification for the search." *McKinnon, 88 Wash.2d at 81, 558 P.2d at 784; accord Bellnier v. Lund, 438 F.Supp. 47, 53 (N.D.N.Y.1977); State v. D.T.W., 425 So.2d 1383, 1387 (Fla.Dist.Ct.App.1983); Doe v. State, 88 N.M. 347, 352, 540 P.2d 827,832 (N.M.Ct.App.1975); People v. D., 34 N.Y.2d 483, 489, 358 N.Y.S.2d 403, 408, 315 N.E.2d 466, 470 (N.Y.Ct.App.1974); In Interest of L.L., 90 Wis.2d 585, 600, 280 N.W.2d 343, 351 (Wis.Ct.App.1979). Cf. Tinker, 393 U.S. at 513, 89 S.Ct. at 740, 21 L.Ed.2d at 741* (school limit on constitutional right justified when action "materially disrupts classwork or involves substantial disorder or invasion of the rights of others"). We also believe that "as the intrusiveness of the search intensifies, the standard of Fourth Amendment 'reasonableness' approaches probable cause." *M.M. v. Anker, 607 F.2d 588, 589 (2d Cir.1979).*

The standard we adopt will not, as the dissent suggests, abandon the schools to drug pushers and muggers. We could make the same arguments that it does about preserving order in a city subway or on its streets. Surely, law enforcement would be easier without the Constitution, but that is not the way that the Framers chose.

We believe that our approach represents the best way to vindicate each student's right to be free from unreasonable searches and to receive a thorough and efficient education. Teachers' hands will not be tied. Indeed, commentators have observed that teachers have a better vantage point than police for systematic observation of potentially criminal student activities and movements and thus can articulate the reasonable grounds for a search. *Trosch, Williams & DeVore, "Public School Searches and the Fourth Amendment," 11 J.L. & Educ. 41, 55-56 (1982).* In the long run, respect for law is the most cherished civic virtue that schools can impart. On that score, we agree with Justice Jackson:

> ...Boards of Education....have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason

> for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes. *[Barnette, 319 U.S. at 637, 63 S.Ct. at 1185, 87 L.Ed. at 1637].*

IV.

Applying these principles to the cases, we conclude that both judgments must be reversed. In the case of T.L.O., the assistant principal did not have reasonable grounds to believe that the student was concealing in her purse evidence of criminal activity or evidence of activity that would seriously interfere with school discipline or order. A student has an expectation of privacy in the contents of her purse. Mere possession of cigarettes did not violate school rule or policy, since the school allowed smoking in designated areas. The contents of the handbag had no direct bearing on the infraction.

The assistant principal's desire, legal in itself, to gather evidence to impeach the student's credibility at a hearing on the disciplinary infraction does not validate the search. Moreover, there were not reasonable grounds to believe that the purse contained cigarettes, if they were the object of the search. No one had furnished information to that effect to the school official. He had, at best, a good hunch. No doubt good hunches would unearth much more evidence of crime on the persons of students and citizens as a whole. But more is required to sustain a search.

In addition, although not necessary to our decision, even conceding the reasonableness of the purse opening, we would be hard pressed to sustain the balance of the search. The sight of rolling papers might justify looking for drugs but not "wholesale rummaging or browsing through a person's papers in the unparticularized hope of uncovering evidence of a crime." *State v. Smith, 113 N.J.Super. 120, 135 (App.Div.1971).*

In the case of Engerud, we also find lacking the necessary factual predicate for a reasonable ground to believe that his locker contained evidence in accordance with the test described. The official action was based only upon an "anonymous tip." The United States Supreme Court in revision of the *Aguilar v. Texas, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964),* three-pronged test of informant's reliability, has stressed that "[its] decisions applying the totality of circumstances analysis ... have consistently recognized the value of corroboration of details of an informant's tip by independent police

work." *Illinois v. Gates, _____ U.S. _____, _____, 103 S.Ct. 2317, 2334, 76 L.Ed.2d 527 (1983).* *See also Florida v. Royer, _____ U.S. _____, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983)* (brief stop, but not search, of person fitting drug courier profile justified without more). In this case there was neither a reliable informer nor independent corroboration. *See People v. D., 34 N.Y.2d 483, 358 N.Y.S.2d 403, 315 N.E.2d 466* (vague information from "confidential sources" insufficient).

We are satisfied that in the context of this case the student had an expectation of privacy in the contents of his locker. "[T]he Fourth Amendment protects people, not places." *Katz, 389 U.S. at 351, 88 S.Ct. at 511, 19 L.Ed.2d at 582.* For the four years of high school, the school locker is a home away from home. In it the student stores the kind of personal "effects" protected by the Fourth Amendment. A student is justified in believing that the master key to the locker will be employed either at his request or convenience. That a master key exists to gain access to a hotel room does not make it any less entitled to privacy. *See Stoner v. California, 376 U.S. 483, 490, 84 S.Ct. 889, 893, 11 L.Ed.2d 856, 861 (1964); United States v. Lyons, 706 F.2d 321, 327-28 (D.C.Cir.1983).* Had the school carried out a policy of regularly inspecting students' lockers, an expectation of privacy might not have arisen. *Cf. People v. Overton, 20 N.Y.2d 360, 362, 283 N.Y.S.2d 22, 24, 229 N.E.2d 596, 598 (N.Y.Ct.App.1967), vacated, 393 U.S. 85, 89 S.Ct. 252, 21 L.Ed.2d 218 (1968), adhered to, 24 N.Y.2d 522, 301 N.Y.S.2d 479, 249 N.E.2d 366 (N.Y.Ct.App.1969)* (vice-principal had occasionally inspected lockers).

We do not disparage the school officials' actions in these cases. They must often, as here, act on short notice based on the information that they possess. Such officials have immunity from damages for claims resulting from their good faith judgments. *See Wood v. Strickland, 420 U.S. 308, 95 S.Ct. 992, 43 L.Ed.2d 214 (1975).* The issue here is not criticism of their actions but the adjudication of constitutional rights when students face juvenile or criminal charges.

V.

In conclusion, (1) the obligation of school officials to furnish a thorough and efficient education and the statutory grants of power to school officials to maintain discipline confer the authority to conduct warrantless administrative searches on school premises;

(2) the Fourth Amendment protects students from unreasonable administrative searches and seizures;

(3) searches are reasonable in this context if school officials have reasonable grounds to believe that a student possesses evidence of illegal activity or activity that would interfere with school discipline and order, and the search itself is reasonable in scope;

(4) evidence otherwise obtained as a result of a warrantless search is illegally obtained and is inadmissible in criminal proceedings against students.

Having found that evidence was obtained in these cases in violation of these principles, we reverse the judgments below and direct that the evidence be suppressed.

SCHREIBER, J., dissenting.

Rather than tying the hands of school administrators in their formidable stuggle to return our schools to places of learning and development, I would permit them to take reasonable steps to enforce valid school regulations. We must not lose sight of the fact that school administrators have an obligation to all children to insure that they receive a quality education. In fulfilling this obligation to all students, school authorities frequently have a duty to invade an individual public school student's privacy to determine whether there have been infractions of, and to enforce, school regulations. Nonetheless, administrators do not have an unlimited right to make any intrusion they desire, for the students have a constitutional right "to be secure in their persons, houses, papers and effects against *unreasonable* searches and seizures ...." (emphasis supplied).

It is important to recognize what this case is *not*. The Court is not faced with police seeking to make a search or seizure that may lawfully be consummated only after a warrant has been obtained upon a showing of probable cause. Indeed, it should be noted that the police need not always satisfy the standard of probable cause. "When the nature and extent of the detention are minimally intrusive of the individual's Fourth Amendment interests, the opposing law enforcement interests can support a seizure based on less than probable cause." *United States v. Place*, _____ U.S. _____, _____, *103 S.Ct. 2637, 2642, 77 L.Ed.2d 110 (1983). See Illinois v. Lafayette*, _____ U.S. _____, *103 S.Ct. 2605, 77 L.Ed.2d 65 (1983)* (probable cause is irrelevant for inventory search made when arrested person is to be

incarcerated); *United States v. Villamonte-Marquez*, _____ U.S. _____, *103 S.Ct. 2573, 77 L.Ed.2d 22 (1983)* (customs officials boarding vessel for routine inspection of documents held reasonable though no probable cause or suspicion); *Michigan v. Summers, 452 U.S. 692, 101 S.Ct. 2587, 69 L.Ed.2d 340 (1981)* (temporary detention of occupants while search of premises pursuant to a warrant is conducted is justifiable if based on articulable suspicion not amounting to probable cause); *South Dakota v. Opperman, 428 U.S. 364, 96 S.Ct. 3092, 49 L.Ed.2d 1000 (1976)* (when made in accordance with standard procedure, not unreasonable for police to make inventory search without probable cause of automobile impounded for parking violations); *United States v. Brignoni-Ponce, 422 U.S. 873, 881, 95 S.Ct. 2574, 2580, 45 L.Ed.2d 607, 617 (1975)* ("when an officer's observations lead him reasonably to suspect that a particular vehicle may contain aliens who are illegally in the country, he may stop the car briefly and investigate the circumstances that provoke suspicion"); *Terry v. Ohio, 392 U.S. 1, 30, 88 S.Ct. 1868, 1884, 20 L.Ed.2d 889, 911 (1968)* (stop and frisk permissible if police officer has an articulable suspicion "that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous....").

The public school environment justifies a standard other than probable cause in deciding whether a public school administrator's investigations transgress reasonableness. Many jurisdictions have required that a search or seizure involving a public school student be predicated upon a "reasonable suspicion." *See, e.g., State in the Interest of G.C., 121 N.J.Super. 108, 117 (Cty.Ct.1972); People v. Jackson, 65 Misc.2d 909, 914, 319 N.Y.S.2d 731, 736 (App.Term 1971) aff'd, 30 N.Y.2d 734, 284 N.E.2d 153, 333 N.Y.S.2d 167 (1972); see also, e.g., Doe v. State, 88 N.M. 347, 352, 540 P.2d 827, 832 (Ct.App.1975)* (reasonable suspicion or reasonable cause to believe). This criterion has the advantage of having been applied by the Supreme Court. *See United States v. Brignoni-Ponce, 422 U.S. at 882, 95 S.Ct. at 2580, 45 L.Ed.2d at 617.* I do not know whether it functionally differs from the majority's "reasonable grounds to believe." To the extent that it requires more than a well-grounded suspicion, I would reject it. I reach that conclusion because a more stringent standard is not suitable in the public school educational setting.

APPENDIX A

Attendance at public school is compulsory. *N.J.S.A. 18A:38-25.* The State is thereby assembling large numbers of young people in schools and has a duty to protect students from being harmed by others and by themselves. The students have a right to pursue their academic endeavors without exposure to dangers or overwhelming distractions. In other words, school authorities have a duty to maintain "a proper educational environment." *3 W. LaFave, Search and Seizure § 10.11, at 458 (1978).*

School administrators must have broad supervisory and disciplinary powers, particularly because protecting students from dangers posed by anti-social activities is directly related to the educational process.[1] This goal has been supported by the Department of Education, which in its *Final Report, supra n. 1, at 59,* states:

> In order to achieve the goals of instructional programs, local boards must actively assist students and staff by assuring a safe atmosphere, free from danger and disruption and one which promotes a positive environment conducive to learning. Disruptive behavior constrains the learning process and lowers school morale at all levels. A discipline policy must hold students accountable and consequently apply remedial and preventive steps that will ensure the safety and promote the education of all pupils.

In this respect the words of Judge Keating of the New York Court of Appeals in *People v. Overton, 20 N.Y.2d 360, 362, 229 N.E.2d 596, 597-98, 283 N.Y.S.2d 22, 24-25 (1967),* vacated, *393 U.S. 85, 89 S.Ct. 252, 21 L.Ed.2d 218 (1968),* adhered to on rehearing, *24 N.Y.2d 522, 249 N.E.2d 366, 301 N.Y.S.2d 479 (1969),* bear repeating:

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[1]The extent and nature of the problems in our schools are well documented. In July 1982, the Division of Research, Planning and Evaluation of the Department of Education published its *Final Report* required by *N.J.S.A. 18A:4-29.1,* repealed and supplemented by *N.J.S.A. 18A:17-46.* Between July 1, 1979 and June 30, 1981, school districts reported 21,721 incidents of violence, vandalism, drug abuse or any combination of these three. *Final Report on the Statewide Assessment of Incidents of Violence, Vandalism and Drug Abuse in the Public Schools* 2,4,5 (July 1982) [hereinafter cited as *Final Report].* This staggering total may well understate the actual figures due to under-reporting. *Id. at* 2.

> The school authorities have an obligation to maintain discipline over the students. It is recognized that, when large numbers of teenagers are gathered together in such an environment, their inexperience and lack of mature judgment can often create hazards to each other. Parents, who surrender their children to this type of environment, in order that they may continue developing both intellectually and socially, have a right to expect certain safeguards.
>
> It is in the high school years particularly that parents are justifiably concerned that their children not become accustomed to antisocial behavior, such as the use of illegal drugs. The susceptibility to suggestion of students of high school age increases the danger. Thus, it is the affirmative obligation of the school authorities to investigate any charge that a student is using or possessing narcotics and to take appropriate steps, if the charge is substantiated.

In light of such policy considerations, the "reasonableness" of the searches in the cases before us must be measured against the nature and extent of the intrusions involved. I part company with the majority's opinion in its assessment of the reasonableness of the school officials' conduct in these cases under either a "reasonable grounds to believe" or "reasonable suspicion" standard. Regardless of the standard employed these minimal invasions of a student's privacy were a valid exercise of a school administrator's authority.

After paying lip service to the principle that school officials have the authority to conduct reasonable searches necessary to maintain safety, order and discipline within the schools, *ante at 343,* the majority evaluates the conduct of the school official as if he were a policeman. If the school authorities acted properly, it is implicitly conceded that use of that evidence in a subsequent juvenile delinquency or criminal proceeding would be lawful. Our conclusion in these two cases centers on the propriety of the actions of the school administrators. No claim is made that the school officials were acting in concert with or on behalf of the police.

T.L.O.

The issue in *T.L.O.* is whether the assistant principal acted reasonably in opening the student's purse. A teacher had reported

that she saw T.L.O., a 14-year-old girl, smoking in the girls' lavatory. Smoking at that location was forbidden by school regulations. When the assistant principal questioned T.L.O. as to whether she had "been smoking in the bathroom," T.L.O. replied that she did not smoke. The assistant principal asked for her purse and opened it. There--right on top--was a package of Marlboro cigarettes. The immediate question is, was the opening of the purse "reasonable" under these circumstances.

No one questions the validity of the school regulations. Smoking not only involves fire hazards, but also threatens the health and comfort of others. *See N.J.S.A. 26:3D-18* (requiring public schools to display sign "indicating that smoking is prohibited in the building except in designated areas"); *N.J.S.A. 26:3D-9* (prohibiting, with exceptions, smoking in all health care facilities); *N.J.S.A. 26:3D-3* (prohibiting smoking "in every passenger elevator in every building other than a single family dwelling"). School officials undoubtedly had a right to enforce that regulation and, in doing so, to investigate infractions and identify the wrongdoer. T.L.O.'s response was not simply a denial of having smoked in the lavatory, but a claim that she did not smoke at all. Her credibility was at issue. Was the school teacher's visual observation correct? Was T.L.O.'s denial predicated on the claim that she did not smoke at all to be believed? By denying that she smoked at all, she made the truth of that assertion at least relevant, and perhaps dispositive, of the accuracy of the teacher's allegation. Was it reasonable simply to open the purse without searching or rummaging through it? There the cigarettes sat on top, plainly visible. The existence of the cigarettes under these circumstances was directly related to the assistant principal's investigation. Once the cigarettes were found he was assured that T.L.O. had not been truthful and had probably violated the school regulation. When balancing the intrusiveness of searches such as opening the purse to see the immediately visible contents, with the broad supervisory authority of the school administrator to enforce a policy prohibiting smoking, a policy grounded in safety and health, the assistant principal was not only warranted, but also might well have been derelict had he not acted as he did.

Once the cigarettes were removed, the drug paraphernalia were in plain view, as the trial court found. Thereafter the assistant principal was justified in continuing his search to determine the extent of that violation.

Engerud

Joseph Abate, vice-principal of Somerville High School, had heard, six months to a year before the incident giving rise to this case, that Jeffrey Engerud, a student at the high school, had been dealing in illegal drugs. Thereafter on one or two other occasions he heard rumors to the same effect. Michael Crisci, principal of the high school, had also heard that Engerud was involved with drugs. On January 29, 1980 the police advised Mr. Abate that they had received a phone call from the father of a student charging Engerud with selling drugs at the high school and threatening to take matters into his own hands if the police did not stop it.

Mr. Abate, Mr. Crisci and Mr. Carpenter, an assistant principal, discussed the matter. Mr. Crisci decided that it was "reasonable" under these circumstances to search Engerud's locker to see if anything might be there. That belief being well-founded, the search should be sustained. In upholding a search of a student's locker in *People v. Overton*, the court commented:

> Indeed, it is doubtful if a school would be properly discharging its duty of supervision over the students, if it failed to retain control over the lockers. Not only have the school authorities a right to inspect but this right becomes a duty when suspicion arises that something of an illegal nature may be secreted there. *[20 N.Y.2d at 363, 229 N.E.2d at 598, 283 N.Y.S.2d at 25].*

Furthermore, Mr. Crisci had a passkey that could open any locker, a fact of which the students were aware. The student's expectation of privacy in the locker must assuredly have been diminished. A student had the right to exclude other students, but not school authorities who might reasonably be expected to inspect the locker upon reasonable belief or suspicion that contraband was hidden there.[2]

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[2]The majority emphasizes a student's expectation of privacy in a locker by characterizing it as a "home away from home." *Ante at 349.* Needless to say, the record in this case does not support that assertion. It would be well for school authorities to dispel any such notion of privacy by notifying students that their lockers are subject to inspections by the school principal or vice-principal when he has a reasonable suspicion that a search is justifiable to insure compliance with school regulations. *3 W. LaFave, Search and Seizure § 10.11, at 463 & n. 54 (1978).*

Various rumors that came to the attention of the authorities at different times, coupled with the telephone call of an irate parent, certainly justified the school authorities in taking action.[3] No matter what standard is applied--reasonable grounds to believe or a reasonable suspicion that Engerud was dealing in goods--the opening by the school principal of the locker, to which he had a key, cannot be said to have been an undue intrusion of Engerud's right of privacy in the locker.

As a matter of policy I would encourage school administrators to investigate violations of rules and regulations designed for the welfare of the student body. A similar position was expressed by the Sixth Essex County Grand Jury, investigating drug abuse among school age children in Essex County, which concluded:

> We must face up to the fact that, because of its very nature, the school is the natural focal point for bad as well as good. Administrators must recognize that drugs are being used in their schools. Society must understand that the first step in eradicating the problem is to recognize its existence. *School officials who recognize the problem of drug abuse and implement steps to cure the problem must be applauded. Their efforts must be met with understanding and sympathy by the community they are serving. [Presentment of Sixth Essex County Grand Jury for the 1978 Term 21 (1979)* (emphasis added)].

Today this Court has substituted its judgment as to what constitutes reasonableness for the judgments of those who are charged with the responsibility for school discipline and supervision, as well as for those of the two trial judges. I would prefer to support public school administrators rather than frustrate their efforts to overcome what has become an overwhelming problem.

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[3]The fact that the caller did not give his name does not negate a reasonable belief or suspicion in view of the several rumors that had come to the attention of the authorities. *Cf. Illinois v. Gates*, _____ *U.S.* _____, _____, *103 S.Ct. 2317, 2328, 76 L.Ed.2d 527 (1983)*(information from an anonymous informant is to be viewed in totality of circumstances to determine existence of probable cause). The majority's reliance upon *Aquilar v. Texas, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964)*, and other cases relating to probable cause is misplaced. The majority by its own terms would require "reasonable grounds to believe," not probable cause, in public school searches. Evidential prerequisites for a reasonable belief or suspicion in a non-criminal matter differ from those necessary to infer probable cause in police enforcement.

I would uphold both searches and affirm the judgments.

Justice GARIBALDI joins in this opinion.

For reversal--Chief Justice WILENTZ and Justices CLIFFORD, HANDLER, POLLOCK and O'HERN--5.

For affirmance--Justices SCHREIBER and GARIBALDI--2.

APPENDIX B

OPINION OF THE SUPERIOR COURT OF NEW JERSEY - APPELLATE DIVISION DECIDED JUNE 30, 1982

STATE IN THE INTEREST OF T.L.O., JUVENILE-APPELLANT.

Superior Court of New Jersey
Appellate Division

Argued June 1, 1982--Decided June 30, 1982.

Before Judges MILMED, JOELSON and GAULKIN.

Lois DeJulio, First Assistant Deputy Public Defender, argued the cause for appellant T.L.O. (*Stanley C. Van Ness*, Public Defender, attorney).

Victoria Curtis Bramson, Deputy Attorney General, argued the cause for respondent State of New Jersey (*Irwin I. Kimmelman*, Attorney General, attorney; *Victoria Curtis Bramson* and *Mark Paul Cronin*, Deputy Attorney General, on the brief).

PER CURIAM.

We affirm the denial of the motion to suppress the evidence produced by the search of the juvenile's purse substantially for the reasons expressed by Judge Nicola in his opinion reported at *178 N.J.Super. 329* (J. & D.R.Ct.1980).

However, we find that neither the record nor the findings and conclusions of the trial judge are sufficient for us to determine the sufficiency of the *Miranda* waiver which was assertedly made by or on behalf of the juvenile immediately before her resumed questioning by the police officer. We must therefore remand the matter to the trial court for further proceedings and findings and conclusions in light of the principles enunciated in *Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981)* and *State v. Fussell, 174 N.J.Super. 14 (App.Div.1980)*.

The final adjudication of delinquency entered on January 7, 1982 is vacated and the matter is remanded for further proceedings consistent herewith. We do not retain jurisdiction.

JOELSON, J.A.D., dissenting in part.

The opinion of the trial judge, *State in Interest of T.L.O., 178 N.J.Super. 329 (J. & D.R.Ct.1980)*, acknowledges that "...public school officials are to be considered governmental officers, ..." *Id. at 340. See also Durgin v. Brown, 37 N.J. 189, 199 (1962); Kaveny v. Bd. of Com'rs of Montclair, 69 N.J.Super. 94, 101-102 (Law Div. 1961), aff'd 71 N.J.Super. 244 (App.Div.1962); State in the Interest of G. C., 121 N.J.Super. 108 (J. & D.R.Ct.1972)*. The trial court's opinion further recognizes that juveniles in public schools are not without constitutional rights. *178 N.J.Super. at 337. See also In re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); Tinker v. Des Moines School Dist., 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969); In re Gault, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967)*. However, although stating that public school students are entitled to Fourth Amendment rights, the trial court chose to follow those jurisdictions which apply a lower standard of reasonableness with regard to searches and seizures conducted by public school authorities against children in school.

The result arrived at by the trial court and approved by my colleagues in the majority would deny to a high school girl suspected of an infraction of a school regulation the same Fourth Amendment protection given to an out-of-school juvenile suspected of a violation of law, or even to an adult suspected of the most heinous crime. As anomalous as this might appear, it must be acknowledged that there is a special relationship between pupils and school authorities, and that the reasonableness of a search and seizure should be assessed in the context of that relationship. However, along with such an acknowledgment comes a need for the exercise of care lest the standard of reasonableness should be permitted to sink so low as to legitimize the search and seizures that took place in the case under review.

Although the trial judge in the opinion which has been adopted by my colleagues gave lip service to the Fourth Amendment, he applied the diminished standard of reasonableness in such a way as to render the protection of the Fourth Amendment virtually unavailable to juveniles in public schools who are suspected of violation of school regulations. As the trial judge noted, some jurisdictions flatly hold that the Fourth Amendment need not be applied in a school setting. *178 N.J.Super. at 339*. However, the New Jersey Legislature has

decreed otherwise in providing that juveniles shall be accorded "[t]he right to be secure from unreasonable searches and seizures." *N.J.S.A. 2A:4-60.* The Fourth Amendment protection of juveniles thus having been confirmed, courts should not effectively deny Fourth Amendment rights to school children while at the same time proclaiming that those rights exist.

The search we are dealing with was conducted in order to ascertain whether the juvenile had violated a school regulation by smoking a tobacco cigarette in an unpermitted location. The search revealed marijuana violations. The trial court in upholding the search relies on the concept of *in loco parentis. 178 N.J.Super. at 338.* That concept, which is usually applied for the purpose of protecting a child, is being used here to strip the juvenile of constitutional protection. It would be rare parents indeed who would turn their daughters over to the police the first time they find her to possess or even distribute marijuana. It is unthinkable that a parent so finding could be successfully prosecuted for not reporting the information to the police, whereas a school authority would most likely not be accorded the same tolerance.

Nevertheless, as already stated, it must be recognized that the *sui generis* relationship between school authorities and pupils requires a different standard of reasonableness concerning search and seizure. For instance, if a teacher has been informed that a school child has matches in his pocket and has announced his intention to roast marshmallows in the clothes closet, an immediate search of the youngster following hs denial of possessing matches would be not only justified but necessary. Common sense must be used on a case by case basis with due regard to the danger that might reasonably be suspected, the seriousness of the suspected misconduct, or the over-riding need to enforce discipline in a given situation. The trial court's opinion suggests guidelines applicable to a lowered standard of reasonableness, *178 N.J.Super. at 342*, but the record before us casts doubt about the validity of the search here even under the very guidelines suggested.

A fuller discussion of the facts of the case is now needed. According to the trial judge's factual review, a high school teacher observed

T.L.O. and another girl smoking cigarettes in the girls' lavatory. The teacher immediately brought the girls to the vice-principal, and upon being asked whether she had been smoking, T.L.O. replied that she did not smoke at all. Thereupon, the vice-principal inspected her purse. His testimony was that as he reached into the pocketbook to remove a package of Marlboro cigarettes, he observed "rolling papers." He then looked further and found what appeared to be marijuana,[1] paraphernalia for smoking marijuana, and some empty plastic bags. He stated that he then went on to look at "all the compartments," and that in one of them he found index cards and letters between T.L.O. and another juvenile, which he read. They indicated drug distribution. He also opened a wallet containing $40.98 found in the compartment. The police were immediately called, and they took T.L.O. to police headquarters.

The juvenile was suspected of smoking ordinary cigarettes. There is no indication whatever, nor has it been charged, that she smoked marijuana in school. The only thing that a search of the juvenile's purse could have disclosed as to tobacco cigarettes was whether or not she possessed them. Yet such possession would not have constituted an infraction of any rule or law. It appears from the opinion of the trial court that the regulation which the juvenile was suspected of violating was that of smoking in an area not designated for that purpose. There was no school regulation or policy which flatly prohibited students from possessing cigarettes or even from smoking them in permitted areas. *178 N.J.Super. at 341-342.* Nor can it be said that the search was necessary to gain information in order to avert the danger of fire attendant upon smoking in an unpermitted location. The vice-principal already had the direct account of the teacher who had personally witnessed the infraction by T.L.O. and another. Thus, the search was not conducted for the purpose of protection or for the maintenance of school discipline, but for the purpose of impeaching the credibility of the juvenile. Such a search is unreasonable even under a lowered standard, and its unreasonableness was exacerbated by its scope.

There is no doubt widespread frustration because of the exclusionary rule which bars from evidence material obtained through an improper search and seizure even though such search has obviously revealed the person searched to be guilty of having violated the criminal law.

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[1]The net weight of the marijuana was stipulated to be 5.40 grams.

APPENDIX B

Such frustration is not difficult to understand, but the problem should not be addressed by our riding rough-shod over the rights of a juvenile in school, diminished though these rights may be.

I would reverse as to the denial of the motion to suppress the evidence obtained from the search and seizure.

APPENDIX C

OPINION OF THE JUVENILE AND DOMESTIC RELATIONS COURT - MIDDLESEX COUNTY, NEW JERSEY, DECIDED SEPTEMBER 26, 1980

STATE IN THE INTEREST OF T.L.O.

Juvenile and Domestic Relations Court
Middlesex County

September 26, 1980.

Frederick A. Simon for movant *(Rosenberg & Simon*, attorneys).

Kenneth J. Lebrato, Assistant Prosecutor, for the State of New Jersey.

NICOLA, P.J.J. & D.R.

This written opinion is intended to supplement the oral opinion previously rendered by the court.

A complaint was filed in this court alleging that a 15-year-old juvenile possessed marijuana with the intent to distribute, in violation of *N.J.S.A. 24:21-20(a)(4)* and *24:21-19(a)(1)*. The juvenile, herein referred to as T.L.O., was accused of illegally possessing marijuana found in her purse. Evidence obtained through a search of the juvenile's purse by a school's vice-principal indicated that the juvenile had been selling marijuana to other students in school.

Prior to this hearing on the complaint the juvenile filed a motion in the Superior Court, Middlesex County, Chancery Division, to show cause why T.L.O. should not be reinstated in school, having been suspended for smoking cigarettes and possessing marijuana. Judge David Furman, J.S.C., heard the matter on March 31, 1980 and upheld the suspension for smoking cigarettes but vacated the suspension imposed for possession of marijuana. The court found that the suspension for posession of marijuana resulted from evidence obtained in a warrantless search of the juvenile's purse, in violation of the Fourth Amendment's guarantees against unreasonable searches and seizures.

Presently before the court for its consideration is a motion to dismiss the complaint and suppress the evidence. The juvenile argues

that the complaint should be dismissed on the basis of *res judicata* and collateral estoppel stemming from the prior proceeding. Additionally, the juvenile argues that her due process rights were violated by an unlawful search and seizure conducted by the assistant vice-principal and seeks to have this evidence suppressed.

This complaint arises from an occurrence on March 7, 1980. A Piscataway High School teacher observed the juvenile and another girl smoking cigarettes while in the girls' lavatory. The teacher escorted the girls to the assistant vice-principal's office and accused them of violating the school's no-smoking restriction. When asked by the vice-principal whether she had, in fact, been smoking in the girls' room, T.L.O. replied that "she didn't smoke at all." With this conflicting response the vice-principal requested the student's purse and upon inspection found a package of cigarettes plainly visible. While removing the cigarettes, marijuana and marijuana paraphernalia became visible. Further inspection revealed $40.98 in single dollar bills and change as well as a handwritten letter by T.L.O. to a friend asking her to sell marijuana in school.

The assistant vice-principal summoned the police and turned over the marijuana and paraphernalia to them. The juvenile's parents were also notified. In the presence of her mother at police headquarters, T.L.O. admitted to selling marijuana in school, after being advised of her rights. She stated that on the day in question, she had sold approximately 18 to 20 marijuana cigarettes for a price of one dollar each.

T.L.O. was suspended from school for three days for smoking cigarettes and seven days for possession of marijuana. As previously indicated, the juvenile obtained an order to show cause why she should not be reinstated in school. At the hearing on that matter the judge found that the search conducted by the vice-principal violated the Fourth Amendment guarantees. Any consent to the search of the purse by the juvenile was ruled ineffective due to a failure to advise her that she had a right to withhold such consent.

The juvenile now seeks to raise the findings of the civil proceeding as a bar to this matter through a motion to dismiss. She asserts the doctrines of *res judicata* and collateral estoppel. Additionally, the juvenile wishes to suppress the evidence by addressing the constitutionality of the search conducted by the vice-principal.

This court will first address the constitutionality of the search and seizure; more specifically, the issue is whether or not a school official is subject to the Fourth Amendment and the standard of probable cause which must exist before said official may engage in a search of a student on school grounds in order to enforce a disciplinary rule.

The Fourth Amendment to the United States Constitution provides, "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated ...."

The Fourth Amendment does not prohibit all searches and seizures, but only unreasonable ones. The reasonableness of a search is determined by a balancing of the government's interests in conducting a search with the individual's right to be free from intrusion. *See Camara v. Municipal Court, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967).* Generally, police officials are required to obtain a search warrant based upon probable cause except for a few "jealously and carefully drawn" exceptions. *Collidge v. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971).* To avoid circumvention of the probable cause requirement through warrantless searches the same standard of probable cause is imposed to justify a warrantless search. *Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).* There have been instances, however, where the government's need to search has been held to outweigh the intrusion upon the person's privacy, and the Supreme Court has allowed a lower standard as justification for a constitutionally valid search. *Terry v. Ohio, 392 U.S. 1, 88, S.Ct. 1868, 20 L.Ed.2d 889 (1968)* (stop and frisk); *United States v. Martinez-Fuerte, 428 U.S. 543, 96 S.Ct. 3074, 49 L.Ed.2d 1116 (1976)* (routine stops at permanent border checkpoints).

The Supreme Court, however, has long been vigilant in protecting the rights secured by the Fourth Amendment, as in evidenced by its adoption of the exclusionary rule. The exclusionary rule, as enunciated in *Weeks v. United States, 232 U.S. 383, 34 S.Ct. 341, 58 L.Ed. 652 (1914)*, allows suppression of evidence seized in violation of the Fourth Amendment. Initially applied only in federal courts, *Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961)* has since extended the rule to the states through the Fourteenth Amendment. However, the court has held that the Fourth

Amendment's proscription only applies to unreasonable searches and seizures made by governmental officials. *Burdeau v. McDowell, 256 U.S. 465, 41 S.Ct. 574, 65 L.Ed. 1048 (1921).*

The vigilance of the Supreme Court is evidenced as well by its recognition of the constitutional rights and protections belonging to juveniles. *In re Gault, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967)* (procedural due process); *In re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970)* (requiring proof beyond a reasonable doubt).

The court has made it clear that juveniles, as students, do not lose their constitutional rights when they enter the school house. *Tinker v. Des Moines School Dist., 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969). Tinker* involved an expression of the First Amendment rights by high school students. The students were suspended for wearing black arm bands to protest the hostilities of the Vietnam War. The court held that the students' actions constituted speech protected by the First Amendment to the Constitution, and that they therefore could not be suspended for expressing their views in a non-disruptive manner:

> The principal use to which the schools are dedicated is to accommodate students during prescribed hours for the purpose of certain types of activities. Among those activities is personal intercommunication among the students. This is not only an inevitable part of the process of attending school; it is also an important part of the educational process. A student's rights, therefore, do not embrace merely the classroom hours. When he is in the cafeteria, or on the playing field, or on the campus during the authorized hours, he may express his opinions, even on controversial subjects like the conflict in Vietnam, if he does so without "materially and substantially interfer[ing] with the requirements of appropriate discipline in the operation of the school" and without colliding with the rights of others. *Burnside v. Byars, 363 F.2d 744, 749 (5th Cir. 1966). [Tinker v. Des Moines School Dist., 393 U.S. at 512-13, 89 S.Ct. at 739-40;* footnotes omitted]

Yet, the court specifically went on to limit the First Amendment rights given to students:

> But conduct by the student, in class or out of it, which for any reason--whether it stems from time, place, or type of behavior--materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech. [Ibid.]

This limitation, intended to protect the classroom decorum, was also recognized in *Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975).* Although *Tinker* and *Goss* did not deal with the Fourth Amendment rights of students, the same recognition of schoolroom decorum appears to be appropriate when dealing with Fourth Amendment rights. *State v. McKinnon, 88 Wash.2d 75, 558 P.2d 781 (Sup.Ct.1977).*

Indeed, the rights of juveniles are not coextensive with the rights of adults, regardless of their student status. The Supreme Court has stated:

> ...[E]ven where there is an invasion of protected freedoms "the power of the state to control the conduct of children reaches beyond the scope of its authority over adults... The well-being of its children is of course a subject within the state's constitutional power to regulate... [P]arents and others, teachers for example, who have this primary responsibility for children's well-being are entitled to the support of the laws designed to aid discharge of that responsibility." *[Ginsberg v. New York, 390 U.S. 629, 638-639, 88 S.Ct. 1274, 1280, 20 L.Ed.2d 195]*

A teacher's responsibility for and control over a student is derived from the concept of *in loco parentis.* It is stated as a general rule that the teacher stands in the place of the pupil's parents, and may exercise powers necessary to control, restrain and correct students within reason, to enable him to properly perform his duties and provide a proper education. *79 C.J.S., Schools, § 493.* In New Jersey the concept is applied through statute requiring the student to recognize the authority of the teacher. The pertinent statute states:

> Pupils in the public schools shall comply with the rules established in pursuance of law for the government of such schools, pursue the prescribed course of study and submit to the authority of the teachers and others in authority over them. *[N.J.S.A. 18A:37-1]*

See, also, N.J.S.A. 18A:37-2 to 5, 18A:25-2.

APPENDIX C

A number of courts have already addressed the issue of searches of students in school by school officials. Their approaches to the applicability of the Fourth Amendment and exclusionary rule have varied and may be placed in the following categories:

(1) The Fourth Amendment does not apply because the school official acted *in loco parentis*, that is, he stands in the place of the parents; *In re G, 11 Cal.App.3d 1193, 90 Cal.Rptr. 361 (D.Ct.App.1970); In re Donaldson, 269 Cal.App.2d 509, 75 Cal.Rptr.220 (D.Ct.App.1969); People v. Stuart, 63 Misc.2d 601, 313 N.Y.S.2d 253 (1970); Commonwealth v. Dingfelt, 227 Pa.Super.380, 323 A.2d 145 (Super.Ct.1974); Mercer v. State, 450 S.W.2d 715 (Tex.Civ.App.1970);*

(2) The Fourth Amendment applies, but the exclusionary rule does not; *Doe v. Renfrow, 475 F.Supp.1012 (N.D.Ind.1979); United States v. Coles, 302 F.Supp.99 (D.Me.,N.D. 1969); State v. Young, 234 Ga. 488, 216 S.E.2d 586 (Sup.Ct.1975); State v. Wingerd, 40 Ohio App.2d 236, 318 N.E.2d 866 (Ct.App.1974);*

(3) The Fourth Amendment applies but the doctrine of *in loco parentis* lowers the standard to be applied in determining the reasonableness of the search; *Bilbrey v. Brown, 481 F.Supp.26 (D.C.Or.,1979); In re W., 29 Cal.App.3d 777, 105 Cal.Rptr. 775 (D.Ct.App.1973); In re C., 26 Cal.App.3d 320, 102 Cal.Rptr. 682 (D.Ct.App.1972); State v. Baccino, 282 A.2d 869 (Del.Super. 1971); State v. F.W.E., 360 So.2d 148 (Fla.D.Ct.App.1978); People v. Ward, 62 Mich.App. 46, 233 N.W.2d 180 (App.Ct.1975); In re G.C., 121 N.J.Super. 108, 296 A.2d 102 (J.Dr.Ct.1972); Doe v. State, 88 N.M. 347, 540 P.2d 827 (Sup.Ct.1975); People v. Singletary, 37 N.Y.2d 310, 372 N.Y.S.2d 68, 333 N.E.2d 369 (Ct.App.1975); People v. D., 34 N.Y.2d 483, 358 N.Y.S.2d 403, 315 N.E.2d 466 (Ct.App.1974); People v. Jackson, 65 Misc.2d 909, 319 N.Y.S.2d 731 (App.Term, 1st Dept. 1971), aff'd, 30 N.Y.2d 734, 333 N.Y.S.2d 167, 284 N.E.2d 153 (Ct.App.1972); State v. McKinnon, 88 Wash.2d 75, 558 P.2d 781 (Sup.Ct.1977); In re L.L., 90 Wis.2d 585, 280 N.W.2d 343 (Sup.Ct.1979);*

(4) The Fourth Amendment applies and requires a finding of probable cause in order for the search to be reasonable; *Picha v. Wielgos, 410 F.Supp. 1214 (W.D.Ill.1976); State v. Mora, 307 So.2d 317 (La.1975), vacated 423 U.S. 809, 96 S.Ct. 20, 46 L.Ed.2d 29; 330 So.2d 900 (La.1976).*

This court, in accordance with the New Jersey case of *In re G.C.*, decided by a court of comparable jurisdiction finds that public school officials are to be considered governmental officers, and therefore the approach taken by the preceeding catagory of cases, which holds the Fourth Amendment applicable to school searches but lowers the reasonableness standard as a result of the application of the *in loco parentis* doctrine, to be the most persuasive.

The court in the recent case of *In re L.L.*, in a review of the authorities of this issue, analyzed the interests involved which allowed the lower standard sufficient to satisfy the Fourth Amendment requirement of reasonableness. These interests may be summarized as: (1) the State's strong interests in providing an education in an "orderly atmosphere which is free from danger and disruption"; (2) the student's reasonable expectation of privacy while in school, which is lower than in other places because of the expected restraint exercised over students for security or discipline; (3) "the realities of the classroom present few less intrusive alternatives to an immediate search for suspected dangerous or illegal items or substances." *90 Wis.2d at 600-601, 280 N.W.2d at 350-51.*

The Federal District Court in *Doe v. Renfrow* considered the factor of an absence of any normal or justifiable expectation of privacy on behalf of the students. The court stated that students cannot be said to enjoy any absolute expectation of privacy while in the classroom setting because of the constant interaction among students, faculty and school administrators. A reasonable right to inspection is necessary for the school's performance of its duty to protect all students and the educational process. The court went on to state:

> There is no question as to the right, and indeed, the duty of school officials to maintain an educationally sound environment within the school. It is the responsibility of the school administrator to insure the proper functioning of the educational process ... Maintaining an educationally productive atmosphere within the school rests upon the school administration certain heavy responsibilities. One of these is that of providing an environment free from activities harmful to the educational function and to the individual student. *[475 F.Supp. at 1020]*

In accordance with the foregoing standards, the United States District Court, in *Bilbrey v. Brown, 481 F.Supp. 26 (D.Or.1979),*

a case in which plaintiffs challenged the constitutionality of a school district's search and seizure policies as set forth in the district's "Minimum Standards for Student Conduct and Discipline," held that such searches may properly be conducted when a school official has reasonable cause to believe a student has violated school policy.

Therefore, this court finds that a school official may properly conduct a search of a student's person if the official has a reasonable suspicion that a crime has been or is in the process of being committed, *or* reasonable cause to believe that the search is necessary to maintain school discipline or enforce school policies.

The present case deals with a school standard of discipline and not criminal activity. The standard of reasonableness must be applied, whether we are dealing with noncriminal activity or a school standard of discipline. A reasonable standard is defined as one designed to protect the health, safety and welfare of the child involved, as well as the student population. School officials, therefore, have the right to deliberately restrict smoking to certain areas within the school. Such designations are not arbitrary, but rather based on the school official's experience and knowledge of fire codes and standards. When a school drafts its smoking regulations it considers the following factors: the structure of the building with respect to fire resistance (*e.g.*, fire walls); the ability to control smoking in the area where it is permitted (*e.g.*, by teacher supervision) in order to insure that the privilege is not abused and to reduce the threat of hostile fires; the availablity of fire escapes. A further consideration, of increasing importance, is the right of the nonsmoking student to be free from exposure to the detrimental effects of cigarette smoke. Certainly the potential harm and detrimental effect that can be caused by the abuse of smoking privileges are as serious as those which may result from criminal activity committed within the schools. School officials, therefore, must have the same rights to investigate and control the abuse of noncriminal activities as they do in instances involving weapons and drugs. Thus, this court finds that the school's nonsmoking regulation has satisfied the reasonableness standard.

While accepting a lower standard in determining the reasonableness of a search, this court is aware of the other factors which the courts have stated would be considered in determining the sufficiency of cause to search. The factors to be judged are: (1) the child's age, history and school record; (2) the prevalence and seriousness of the problem in the school to which the search was directed;

(3) the exigency of the situation requiring an immediate warrantless search; (4) the probative value and reliability of the information used as a justification for the search; (5) the teacher's prior experience with the student. *In re L.L.*, *State v. McKinnon*, *Bellnier v. Lund*, *Doe v. State* all *supra*. These factors should serve as a guideline in determining whether some reasonable suspicion of a crime or violation of school regulation has occurred.

Applying the foregoing to the facts of this case, it is apparent that the vice-principal had a right to conduct a search of the student. A teacher had observed the student smoking in an area where such was prohibited. Although the student denied smoking, the school official had a duty to investigate and determine whether a violation of the school's code had occurred. The nature of this situation dictated the actions taken by the vice-principal.

Although the vice-principal was justified in opening the purse, an exploratory search was not permissible. His limited purpose was to determine whether the violation, which was reasonably suspected, had, in fact, occurred. However, once the purse was open, the contents were subject to the "plain view" doctrine--an exception to the warrant requirement. Under the plain view doctrine a law enforcement officer may seize any object that is in his plain view if he has a right to be in the position to have that view. *Harris v. United States, 390 U.S. 234, 88 S.Ct. 992, 19 L.Ed.2d 1067 (1968); State v. McKnight, 52 N.J. 35 (1968).* Upon finding the marijuana and paraphernalia, the vice-principal was justified in continuing his search to determine the extent of that violation.

Concerning the juvenile's motion to dismiss, the issue raised is whether the present criminal proceeding in Juvenile and Domestic Relations Court is barred by the former hearing at which the juvenile sought reinstatement in school. As stated, the juvenile contends that the complaint should be dismissed on the basis of *res judicata* and collateral estoppel. The State argues that those doctrines which have been incorporated into the criminal law through the Double Jeopardy Clause, are inapplicable and do not bar the present proceeding.

In *State v. Redinger, 64 N.J. 41 (1973)*, our Supreme Court stated:

> "Collateral estoppel has been described as an awkward phrase. Essentially, it means that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same

> parties in any future lawsuit." *Ashe v. Swenson, 397 U.S. 436, 443, 90 S.Ct. 1189, 1194, 25 L.Ed.2d 469 (1970).* In *Ashe*, the Supreme Court held that collateral estoppel as applied in the Federal decisions must be considered a part of the Fifth Amendment's guaranty against double jeopardy and binding on the States through the 14th Amendment under *Benton v. Maryland, 395 U.S. 784, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969).* [at 45-46]

The applicability of collateral estoppel to the present case appears to hinge upon the question of sufficiency of identity of the parties in the two proceedings. A similar situation was considered in *Kugler v. Banner Pontiac-Buick, Opel, Inc., 120 N.J. Super. 572 (Ch.Div.1972).* In that case the Attorney General filed a complaint against the defendant for a consumer fraud violation, seeking relief under the applicable statute. An order to show cause was issued under the Consumer Fraud Act. At the return hearing on the order to show cause defendant moved to discharge the order based on the doctrines of *res judicata* and collateral estoppel. Prior to the filing of the complaint defendant had appeared in the municipal court on a violation of a similar statute. In that proceeding defendant was acquitted upon the same operative facts. As a result, the court in the second proceeding was confronted with the issue of whether collateral estoppel would apply to the action taken by the Attorney General.

That court considered the identity of the parties a requisite to the application of that doctrine and stated: "Certainly it could not have been intended that a proceeding in the name of the State by a local prosecutor would forever collaterally stop the Attorney General in an *ex. rel.* action or as legal advisor and attorney to an administrative agency." *120 N.J.Super. at 580.* As a result, the court denied defendant's motion to dismiss on the grounds of *res judicata* and collateral estoppel.

In the present case the juvenile argues that the parties involved in the prior proceeding are identical in interest with those in the present hearing. She argues that although the State of New Jersey was not named in the prior proceeding concerning the student's reinstatement, the Piscataway Board of Education stood in precisely the same position as the State does in this hearing. However, this court finds, in accordance with the reasoning of the court in *Kugler*, that the State's goal is substantially different from that of the board of education.

The distinctions between the powers and duties of the county prosecutor and board of education are delineated in the statutes. Compare *N.J.S.A. 18A:11-1* with *N.J.S.A. 2A:158-5.* It is obvious that the board of education is not subject to the same mandate as the prosecutor, to "use all reasonable and lawful diligence for the detection, arrest, indictment and conviction of offenders against the laws." *N.J.S.A. 2A:158-5.* In contrast, administration and management of the school districts are properly understood to be the function of the board of education.

In this case the parties are even more distinct entities than in *Kugler*. There, as here, both parties were arms of the State. But in *Kugler*, both parties were involved in the enforcement of the law as well. And even though the prior prosecution in that case concluded with an acquittal, the court still found that it would not bar the latter proceeding. That court recognized the injustice which would result by permitting actions brought on behalf of the State under the Consumer Fraud Act to be barred by similar actions in municipal court. The same reasoning is applicable here. Although the board of education was involved in the hearing to reinstate the juvenile in school, its appearance cannot be found to adequately represent the State's prosecutorial interests. To allow the State to be bound in this case by the decision in the prior hearing would deny the State its opportunity to prosecute this juvenile and thereby carry out its mandate.

While there was a prior determination on the constitutionality of the search at issue here, the concepts of collateral estoppel, *res judicata* and double jeopardy do not dictate a bar to this proceeding. Consequently, the motion to dismiss is denied and the matter is to be listed for trial.